

than the Delaware River Basin Compact).

(d) *Schedule.* The Executive Director shall cause the schedule for each hearing to be listed in advance upon a "hearing docket" which shall be posted in public view at the office of the Commission.

§ 401.82 Hearing officer.

(a) *Generally.* Hearings shall be conducted by one or more members of the Commission, by the Executive Director, or by such other hearing officer as the chairman may designate, except as provided in paragraph (b) of this section.

(b) *Wasteload allocation cases.* In cases involving the allocation of the assimilative capacity of a stream:

(1) The Executive Director shall appoint a hearing board of at least two persons. One of them shall be nominated by the water pollution control agency of the state in which discharge originates, and he shall be chairman. The board shall have and exercise the powers and duties of a hearing officer;

(2) A quorum of the board for purposes of the hearing shall consist of two members; and

(3) Questions of practice or procedure during the hearing shall be determined by the chairman.

§ 401.83 Hearing procedure.

(a) The hearing officer shall have the power to rule upon offers of proof and the admissibility of evidence, to regulate the course of the hearings, and to hold conferences for the settlement or simplification of issues.

(b) The hearing officer shall cause each witness to be sworn or to make affirmation.

(c) Any party to a hearing shall have the right to present evidence and to examine and cross-examine witnesses.

(d) When necessary, in order to prevent undue prolongation of the hearing, the hearing officer may limit the number of times any witness may testify, the repetitious examination or cross-examination of witnesses, or the extent of corroborative or cumulative testimony.

(e) The hearing officer shall exclude irrelevant, immaterial or unduly repetitious evidence, but the parties shall

not be bound by technical rules of evidence, and all relevant evidence of reasonably probative value may be received.

(f) Any person entitled to be heard may appear and be heard in person or be represented by an attorney at law or, if the applicant is a corporation, by its corporate officer, an authorized employee, or by an attorney at law.

(g) Briefs and oral argument may be required by the hearing officer and shall be permitted upon request made prior to the close of the hearing by any party. They shall be part of the record unless otherwise ordered by the hearing officer.

§ 401.84 Staff and other expert testimony.

(a) The Executive Director shall arrange for the presentation of testimony by the Commission's technical staff and other experts, as he may deem necessary or desirable, to incorporate in the record or support the administrative action, determination or decision which is the subject of the hearing.

(b) A party to the hearing may submit the testimony of an expert witness, to be made part of the record, whether or not the expert is present, provided that such testimony has been reduced to writing, sworn, and copies thereof distributed to all parties appearing at the hearing. Such testimony, however, shall not be admitted whenever the expert is not present and available for cross-examination at the hearing unless the testimony shall have been made available to all parties of record at least five days prior to the hearing and all parties have waived the right of cross-examination.

§ 401.85 Record of proceedings.

A record of the proceedings and evidence at each hearing shall be made by a qualified stenographer designated by the Executive Director. Where demanded by the applicant, objector, or any other person who is a party to these proceedings, or where deemed necessary by the hearing officer, the testimony shall be transcribed. In those instances where a transcript of proceedings is made, two copies shall be delivered to the Commission. The applicant, objector, or other person

who desires copies shall obtain them from the stenographer at such price as may be agreed upon by the stenographer and the person desiring the transcript.

§ 401.86 Assessment of costs.

(a) Whenever an adjudicatory hearing is required, the costs thereof, as herein defined, shall be assessed by the hearing officer to the applicant. For the purposes of this section costs include all incremental costs incurred by the Commission, including, but not limited to, hearing examiner and expert consultants reasonably necessary in the matter, stenographic record, rental of the hall and other related expenses.

(b) Upon the scheduling of a matter for adjudicatory hearing, the Secretary shall furnish to the applicant a reasonable estimate of the costs to be incurred under this section. The applicant may be required to furnish security for such costs either by cash deposit or by a surety bond of a corporate surety authorized to do business in a signatory state.

[42 FR 15310, Mar. 21, 1977]

§ 401.87 Findings and report.

The hearing officer shall prepare a report of his findings and recommendations. In the case of an objection to a wasteload allocation, the hearing officer shall make specific findings of a recommended allocation of carbonaceous oxygen demand, which may increase, reduce or confirm the Executive Director's determination. The report shall be served by personal service or certified mail (return receipt requested) upon each party to the hearing or its counsel unless all parties have waived service of the report. The applicant and any objector may file objections to the report within 20 days after the service upon him of a copy of the report. A brief shall be filed together with any objections. The report of the hearing officer together with objections and briefs shall be promptly submitted to the Commission. The Commission may require or permit oral argument upon such submission prior to its decision.

[39 FR 25474, July 11, 1974. Redesignated at 42 FR 15310, Mar. 21, 1977]

§ 401.88 Action by the Commission.

The Commission will act upon the findings and recommendations of the hearing officer pursuant to law. The determination of the Commission will be in writing and shall be filed together with any transcript of the hearing, report of the hearing officer, objections, thereto, and all plans, maps, exhibits and other papers, records or documents relating to the hearing. Subject to the provisions of section 2-4.6, all such records, papers and documents may be examined by any person at the office of the Commission, and shall not be removed therefrom except temporarily upon the written order of the Secretary after the filing of a receipt therefor in form prescribed by the Secretary. Copies of any such records and papers may be made in the office of the Commission by any person, subject to such reasonable safeguards for the protection of the records as the Executive Director may require.

[39 FR 25474, July 11, 1974. Redesignated at 42 FR 15310, Mar. 21, 1977]

Subpart G—Penalties and Settlements in Lieu of Penalties

SOURCE: 52 FR 37602, Oct. 8, 1987, unless otherwise noted.

§ 401.91 Scope of subpart.

This subpart shall be applicable where the Commission shall have information indicating that a person has violated or attempted to violate any provision of the Commission's Compact or any of its rules, regulations or orders (hereafter referred to as possible violator). For the purposes of this subpart, person shall include person, partnership, corporation, business association, governmental agency or authority.

§ 401.92 Notice to possible violators.

Upon direction of the Commission the Executive Director shall, and in all other instances, the Executive Director may require a possible violator to show cause before the Commission why a penalty should not be assessed in accordance with the provisions of these rules and section 14.17 of the Compact.